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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 601

ANDREW OROZ,

Petitioner,

v.

AMERICAN PRESIDENT LINES, LTD.,

Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION

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Question Presented

The real question presented is whether the Court of Appeals was correct in ruling that there was no abuse of discretion by the District Court in finding on the undisputed facts that there was inexcusable delay on the part of petitioner, prejudicial to respondent, in waiting more than five years before instituting any action and that he was barred by the doctrine of laches.

Statutes Involved

The pertinent provisions of the New York and New Jersey statutes are set forth in pages 3 and 4 of the petition.

In addition, there is reference to the Jones Act, 41 Stat. 1007, 46 U. S. C. 688, in the 12th article of the complaint (R. 4).* Petitioner, however, was a longshoreman, not a

*Numerals following the letter "R" in parenthesis refer to pages in plaintiff-appellant's appendix in the Court of Appeals which has been filed here.

seaman, not one of those who go to sea in ships and who are the true wards of the admiralty. Both Courts below correctly ruled that the Jones Act does not apply to longshoremen, non-employees of the shipowner, and that, in any event, petitioner would be barred by the express 3 year limitation period of that Act.

No contention is now made that either the Jones Act, 41 Stat. 1007, 46 U. S. C. 688 or the Federal Employer's Liability Act, 35 Stat. 65, 45 U. S. C. 51, is applicable to this case.

Statement

Action was brought by petitioner to recover for personal injuries sustained more than five years prior to the date of the summons in an accident on board one of respondent's ships while petitioner was employed as a longshoreman by an independent stevedoring company.

The complaint (R. 2-5) claims negligence of respondent and unseaworthiness of its vessel. Jurisdiction is based upon diversity of citizenship.

The third separate defense pleaded by respondent (R. 7) reads as follows:

> "NINTH: Alleged right of action set forth in the complaint against defendant did not accrue within the period limited by the applicable statutes of the States of New Jersey and New York."

Respondent's motion to dismiss (R. 8), on which judgment was granted, was based on the pleadings and on the defense that action was not timely brought. Respondent's affidavit in support of its motion recited no facts not established by the pleadings. The primary purpose of the affidavit was to set forth for the Court the pertinent provisions of the applicable statutes of limitation (R. 10-12).

Petitioner thereupon filed an opposing affidavit (R. 13-16) setting forth in full the alleged factual background that petitioner urged in justification of the years of delay in instituting suit. This merely alleged petitioner's ignorance and stated that he had been unaware of any remedy that he might have had against the shipowner. Respondent has not, for purposes of the instant proceedings, controverted the alleged facts stated in this affidavit. At no time has it been suggested to the Court, either at hearing before the District Court, by subsequent motion or before the Court of Appeals, that petitioner himself be heard in person in substantiation of the affidavit. Counsel for petitioner made no contention then or later that the affidavit in any way was insufficient as an exposition or proof of petitioner's position. He did not seek then, nor has he sought at any time since, the right to amend the complaint or to submit further proof.

There being no genuine issue as to any material fact, Rule 56(c) F. R. C. P., the matter was thereupon heard on the foregoing documents. The District Court looked to the analogous statutes of New York and New Jersey, there being no federal statute of limitations, and ruled that the two year limitation statute of New Jersey would have been applied by a State Court. Then, after giving full consideration to petitioner's contention that petitioner was not guilty of laches, the Court found that the delay of more than five years was inexcusable, that prejudice to respondent in the circumstances of this case was inevitable, and dismissed the complaint.

On appeal, a majority of the Court of Appeals ruled that the doctrine of laches was applicable and that there had been no abuse of discretion by the District Court in the application of the doctrine. Circuit Judge Moore concurred in the result on the ground that he would apply the State statute of limitations.

Argument

The ruling of the Court of Appeals that there had been no abuse of discretion in the dismissal of the complaint, after careful consideration of all the undisputed facts, is clearly correct. No substantial questions, essential to the disposition of the litigation, and no conflict of decisions, are presented.

POINT I

THE ISSUE BEFORE THE DISTRICT COURT OF WHETHER A STATE COURT MAY APPLY ITS OWN STATUTE OF LIMITATIONS IN AN ACTION ARISING OUT OF A MARITIME TORT, FOR WHICH THERE IS NO FEDERAL STATUTORY LIMITATION, OR APPLY THE ADMIRALTY DOCTRINE OF LACHES, IS MOOT.

This is the issue which was specifically left open in *McAllister* v. *Magnolia Petroleum Co.* (1958), 357 U. S. 221, and in which reference was made to the decision of the District Court in the present case. Inasmuch as this action was filed more than three years after the expiration of the period of the applicable state statute of limitations, and as there has been no abuse of discretion in the application of the doctrine of laches, resolution of the broad issue of whether the doctrine of laches is applicable at all is no longer essential to the disposition of the present litigation.

POINT II

THE DECISION OF THE COURT OF APPEALS INVOLVES NO CONFLICT WITH THE DECISIONS OF ANY OTHER COURT.

There has been no mechanical application of any statute of limitations. The Courts below rather have recognized the substantive rights created by the admiralty but have

rejected the procedural niceties which literal application of the several State statutes would involve. In so doing their decisions have followed rather than rejected the basic principles enunciated in *Levinson* v. *Deupree* (1953), 345 U. S. 648 and *Garrett* v. *Moore-McCormack Co.* (1942), 317 U. S. 239.

There is, furthermore, no conflict with any case concerned with the interpretation of either the New York or New Jersey statutes. None has been suggested, for the New York statutes, and all the cases relating to New Jersey statutes are in accord with the unanimous view (on this point) of the Court of Appeals in the present case. *Skovgaard* v. *M/V Tungus* (3 Cir. 1957), 252 F. 2d 14, certiorari granted June 9, 1958, and *Halecki* v. *United New York & New Jersey Sandy Hook Pilots Association* (2 Cir. 1958), 251 F. 2d 708 certiorari granted June 9, 1958, are concerned with numerouus issues not involved in the present case. They also raise the question of interpretation of a different statute. In *Skovgaard* and *Tungus* there was an issue whether absolute liability in circumstances not recognized by New Jersey law at the time its death statute was passed, but recognized subsequently by decisions of this Court extending admiralty doctrines of unseaworthiness into new areas, was to be deemed as encompassed by the New Jersey death act. On this point there was no authoritative interpretation by the New Jersey State Courts.

The New Jersey statute presently under consideration relates to limitation of actions, a matter of procedure rather than of the creation of substantive rights. It has been clearly established by the Courts of New Jersey that N. J. S. A. 2A: 14-2, the two year limitation provision, applies to *all* personal injury claims, whether based upon tort or contract. *Burns* v. *Bethlehem Steel Co.* (1955), 20 N. J. 37, 118 A. 2d 544; *Weinstein* v. *Blanchard* (Err. & App. 1932), 109 N. J. L. 332, 162 Atl. 601. See *Martucci*

v. Koppers Co. (N. J. 1945), 58 F. Supp. 707. This construction of the New Jersey statutes by the New Jersey Courts is determinative.

POINT III

THE COURTS BELOW CORRECTLY APPLIED WELL ESTABLISHED PRINCIPLES OF BOTH THE ADMIRALTY AND COMMON LAW.

The District Court did not dismiss the complaint merely because of the passage of the time specified in the statute. Petitioner was given every opportunity to introduce evidence and decision was made only after careful consideration of all the undisputed proof presented by petitioner. The Court then found on all the evidence that the delay was inexcusable and that prejudice to respondent would result in having to try the case on the basis of the third-party stevedore's compensation files and on the testimony of the probably hostile employees of that third-party [e.g. *Weyerhaeuser S. S. Co. v. Nacirema Operating Co.* (1958), 355 U. S. 563].

This is a far different situation from that presented in *Gardner v. Panama Railroad Co.* (1951), 342 U. S. 29, where final suit was brought only five days after timely prior proceedings had been dismissed because of Congressional action.

The present proceedings are also quite different from those in *Czaplicki v. SS Hocgh Silvercloud* (1956), 351 U. S. 525, where a finding of laches was made initially by the Court of Appeals on the basis of controverted facts which had not been considered by the District Court and where it was virtually conceded before this Court that if the issue of laches was determinative, the case should be remanded for consideration of that issue by the District Court.

In *Czaplicki*, this Court said at page 533, after considering *Gardner*:

> "This does not mean, of course, that the state statutes of limitations are immaterial in determining whether laches is a bar, but it does mean that they are not conclusive, and that the determination should not be made without first considering all the circumstances bearing on the issue."

Petitioner's argument is that for all practical purposes the state statute is to be disregarded entirely. Such position is untenable.

In this case ample opportunity was accorded to petitioner to justify his delay. See *Dixon* v. *American Telephone & Telegraph Co.* (2 Cir., 1947), 159 F. 2d 863.

There has been no error as to procedure or abuse in the exercise of discretion.

CONCLUSION

It is respectfully submitted that Petition for Writ of Certiorari should be denied.

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